

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DAVID RUSSELL,

Plaintiff,

DECISION AND ORDER

09-CV-6641L

v.

JADA RAO, MD,  
ABASEY, MD,

Defendants

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Plaintiff David Russell filed this *pro se* action under 42 U.S.C. § 1983. At the time that he filed the complaint in 2009, plaintiff was an inmate in the custody of the New York State Department of Correctional Services. In November 2011, he was released to the custody of the federal Department of Homeland Security, for purposes of deportation. Plaintiff has since been deported to Barbados, where he currently resides.

Defendants, both of whom are physicians employed by New York State, have moved to dismiss the complaint for failure to prosecute. In support of the motion, defendants' attorney states that plaintiff has not contacted him or the Court, or taken any other action in this case, since January 2012. *See* Dkt. #42-2.

Plaintiff has, however, filed a response to defendants' motion. He states his understanding that earlier this year, defense counsel sought an extension of time to file dispositive motions, and that "[t]he Court has yet to make a decision, to my knowledge," on that request. Dkt. #44 ¶ 6.

In fact, the Court did grant defendants' extension request, giving them to May 11, 2012 to file dispositive motions. *See* Dkt. #41. Defendants' motion to dismiss was filed on May 11, and thus is timely.


In any event, the fact remains that plaintiff has been deported, and apparently cannot lawfully reenter this country. As a practical matter, it is virtually impossible for him to effectively continue prosecuting this case. Perhaps most obviously, plaintiff would not be able to come here to try the case. Since plaintiff's current status thus renders impossible further prosecution of this case, or any meaningful disposition of the issues presented, the complaint is dismissed.

### CONCLUSION

Defendants' motion to dismiss the complaint (Dkt. #42) is granted, and the complaint is dismissed.

Plaintiff's motion to appoint counsel (Dkt. #27) and motion to compel discovery (Dkt. #29) are denied as moot.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
September 4, 2012.